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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. - - - - - -

R. L. NORTON,

Petitioner,

vs.

STATE OF IDAHO

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IDAHO

Petitioner respectfully requests the issuance of a writ of certiorari to review the opinion of the Supreme Court of the State of Idaho affirming the order of the Sixth Judicial District Court of the same State quashing its writ of habeas corpus previously issued to prevent inter-state extradition.

OPINION BELOW

The District Court issued no opinion to support its order. The opinion of the Idaho Supreme Court is, at this date, not officially reported, but is unofficially reported in 470 P. 2d 413. A copy of it is appended to this Petition as Appendix "A".

JURISDICTION

The opinion of the Supreme Court of the State of Idaho was filed on June 15, 1970, and its order of remittitur filed in the State District Court on July 15, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED

1. Whether the bare presumption raised by the admittedly prima facie regular extradition process of the demanding State is sufficient to prove the accused to be a fugitive from justice within the provisions of Section 2 of Article IV of the Constitution of the United States where

his specific proof that he was not in the demanding State at the time he allegedly committed the crime was uncontroverted.

2. In habeas corpus proceedings resisting inter-state extradition, was the trial court justified in refusing to entertain evidence respecting the motive for the prosecution in the demanding State where the accused asserted the proceedings were actually an attempt to use criminal process for the collection of a private debt and that, therefore, no probable cause existed for the issuance of the warrant for his arrest under the Fourth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Article IV, Section 2, (2): "A person charged in any state with treason, felony or other crime, who shall flee from justice, and be found in another state, shall on demand of the

executive authority of the State from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime."

Constitution of the United States, Amendment IV: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF FACTS

On November 5, 1968, the Petitioner, Raymond L. Norton, applied in the Sixth Judicial District Court of the State of Idaho for a writ of habeas corpus to resist extradition proceedings seeking to return him to the State of Oklahoma to answer a charge of embezzlement. Specifically, Norton, a building contractor, was accused of "on or about the 15th day of Juen, 1968" embezzling the

sum of $17,899.33 allegedly the property of one, Dale Sorrels, delivered to him for the purchase of material and labor during the performance of a contract to construct a steel building in El Reno, Oklahoma, for Sorrels.

Based upon Norton's Petition alleging that he was not present in the State of Oklahoma at the time the crime was supposedly committed; that no crime was charged; and that the proceedings were an attempt to collect a private debt through criminal process, a writ was issued to the Sheriff of Bannock County, Idaho, returnable on December 16, 1968. On the return day, the Court received proof that Norton was actually in Albuquerque, New Mexico, from June 14 through June 17, 1968, but refused his offer to prove the proceedings were actually an attempted use of criminal process to collect a private debt.

The trial court, after the hearing, concluded that the alleged acts would not constitute a crime under Idaho law and continued the matter until January 10, 1969, to grant the demanding State an opportunity to show such acts did violate Oklahoma law and, further, that under such law, it had been properly alleged the accused committed the crime charged "he being someplace else a week either side."

The Oklahoma authorities availed themselves of this opportunity only by submitting copies of their statutes making a contractor a trustee for construction funds. Nothing was submitted to controvert Norton's evidence that he was not present in Oklahoma "a week either side" of the date the alleged crime took place. Nonetheless, the District Court ordered the writ quashed.

Norton appealed this Order to the Idaho Supreme Court, claiming it to be erroneous in that his evidence that he was not in Oklahoma

when he was accused of committing a crime had not been disproved and that, therefore, he was not a fugitive from justice within the provisions of the extradition procedures prescribed by the Constitution and Statutes of the United States and the State of Idaho. He further asserted that the Court erred in refusing to consider his contention that the extradition proceedings and the allegations upon which they were based actually constituted a use of criminal process for the collection of a private debt, contrary to the provisions of the Fourth Amendment to the Constitution of the United States.

These propositions were both briefed and argued to the Idaho Supreme Court, but that Court upheld the District Court Order. In so doing, in its opinion, the Court refused to consider whether the evidence submitted overcame the presumption of the extradition process, even though the trial court made no specific finding on the point, stating that "while his evidence may have large significance

in the eventual determination of his guilt or innocence, such is a matter we may not consider herein."

Though admitting Federal law to be supreme in the field of extradition, and recognizing Oklahoma cases to be to the contrary, the opinion upheld the trial court's refusal to consider or inquire into the motives inducing and guiding the request for extradition, holding such to be immaterial and inappropriate.

REASONS FOR GRANTING THE WRIT

In refusing to overrule the State trial court's order quashing the habeas corpus writ, the Idaho Supreme Court sublimated what should be overriding Constitutional considerations to outdated procedural rules and considerations. In justifying this position, it held the consideration of alleged violations of Federal and Constitutional rights to be immaterial and inappropriate because such inquiry might go to the merits

of the case.

Rather, the overriding importance of the Federal and Constitutional issues should have made any incidental consideration of the merits immaterial. The highest tribunal of the demanding state, Oklahoma, said in Ex Parte Offutt, 29 Okla. Crim. Rpts. 401, 234 P. 222, "it never was intended that the act of Congress passed to carry out this provision of the Constitution should be used to set in motion the machinery of the executive departments of two states at the instance of a private person to enable such person to graitfy his malice, or aid him in enforcing the collection of a debt."

Fundamental fairness should have required that this standard be applied to the courts of the asylum state. Instead, the Idaho Court adopted a so-called majority rule, limiting inquiry in the asylum state to technicalities and cited an 1885

case, Roberts vs. Reilly, 116 U. S. 80, to support its position. This case was also cited by the Oklahoma Court in the Offutt decision.

Federal law should be supreme in extradition matters. Here, no majority or minority rules should exist between states. Standards should be uniform and controlled by considerations of constitutional rights implemented by Federal statutes.

This Court should establish a uniformity in the standards for executive consideration and the scope of inquiry by trial courts in the asylum state in extradition matters where, as here, areas of conflict exist between state holdings and the assertion of what should be superior federal constitutionally guaranteed rights.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF THE STATE OF IDAHO

No._____

R. L. NORTON,	)	
	)	Pocatello,
Plaintiff-Appellant,	)	April Term,
	)	1970
vs.	)	Filed
	)	June 15, 1970
STATE OF IDAHO,	)	Martin V. Huff,
	)	Clerk
Defendant-Respondent	)	
	)	

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Honorable Arthur P. Oliver, District Judge.

Appeal from order quashing writ of habeas corups issued to prevent inter-state extradition. Affirmed.

William W. Becker, Pocatello, for appellant.

Robert M. Robson, Attorney General; Mack A. Redford, Deputy Attorney General; and James B. Green, Deputy Prosecuting Attorney, Bannock County, for respondent.

SHEPARD, J.

In this case a writ of habeas corpus was sought and issued by the district court preventing the interstate extradition of the accused, R. L. Norton. After certain preliminary proceedings which are not questioned herein a hearing was held upon said writ and thereafter the writ was quashed. Petitioner appeals from that order and we affirm.

Norton was charged by an information with the crime of embezzlement in Oklahoma. A fugitive warrant was issued and when Norton was found residing in Rigby, Idaho, a warrant for his arrest was issued in Idaho. While confined to the Bannock County jail in Idaho, Norton sought and obtained the issuance of a writ of habeas corpus by the

district court. At a hearing thereon Norton sought to prove that he was not present in the state of Oklahoma at the time of the commission of the alleged crime by presenting evidence accepted by the trial court which consisted of certain motel and motor vehicle repair receipts which might tend to show his presence in Albuquerque, New Mexico on the date in question. The accused also sought to question the motivation for the extradition by asserting that the proceedings were an attempt to collect a private debt through criminal process, but the trial court refused to accept evidence on this contention. Following the hearing the writ of habeas corpus was quashed and Norton was ordered to surrender himself for extradition. From these orders Norton appeals.

Appellant Norton concedes that there is no irregularity in the extradition process. Error is assigned, however, in the action of the trial court quashing the writ since,

it is contended, Norton was not in Oklahoma at the time of the commission of the alleged crime and therefore was not a fugitive from justice. Error is also assigned in the trial court's refusal to permit evidence on the question of the motive behind the extradition, i.e., the alleged utilization of criminal process for the collection of a private debt.

In matters of interstate extradition federal law controls over state law. In re Martz, 83 Idaho 72, 357 P. 2d 940 (1960); Smith v. State, 89 Idaho 70, 403 P. 2d 221 (1965); Fenton v. State, 91 Idaho 149, 417 P. 2d 415 (1966); 18 U.S.C.A. § 3182.

It is well established in Idaho that three elements must exist before a rendition in response to an extradition request may be granted. The accused must have been demanded as a fugitive by the executive of the demanding state, the accused must be charged with a crime in the demanding state,

and the accused must be charged by an indictment or affidavit made before a magistrate, a certified copy of which must be presented with the requisition for extradition. In re Martz, supra; Smith v. State, supra. Appellant Norton does not question the existence of any of the three elements, but in his first assignment of error raises the question of whether he proved that he was not a fugitive from justice within the meaning of 18 U.S.C.A. § 3182.

Appellant asserts that in order to be a fugitive an accused must have been present in the demanding state at the time of the alleged crime and absent from that state at the time he is called to answer. It is universally held that when the extradition process is regular, as is conceded herein, there is a presumption that the executive authority of the demanding state is correct in his determination that the accused is a fugitive. Hyatt v. New York, 188 U.S. 691

(1903); Smith v. State, supra; In re Martz, supra.

As stated in Smith v. State of Idaho, 373 F. 2d 149 (9th Cir. 1967), [the subsequent federal proceeding following this Court's opinion in State v. Smith, supra]:

> "Even if all of the individuals listed by appellant claimed to have seen him in Oklahoma on or about October 26, 1961, this would present only a conflict in the evidence. For extradition purposes, such a conflict is not enough to release the accused.
>
> '***we may not properly approve the discharge of the respondent unless it appears from the record that he succeeded in showing by clear and satisfactory evidence that he was outside the limits of South Carolina at the time of the homicide. Stated otherwise, he should not have been released unless it appeared beyond reasonable doubt that he was without the State of South Carolina when the alleged offense was committed***.
>
> 'The record discloses only a conflict of evidence; the requirement which we have indicated has not been met***.' South Carolina v. Bailey, 289 U.S. 412, 421-422, 53 S.Ct. 667, 671, 77 L. Ed. 1292 (1933).

"Admittedly, the prisoner held for extradition has a heavy burden of proof. But this arises legitimately from the nature of an extradition proceeding, since essentially the court is reviewing the factual determination of the governor as to the presence of the accused in the demanding state, and the guilt or innocence of the accused is not in question."

As in Smith, we are not prepared to say herein that the evidence of the accused sufficiently rebutted the case established by the admittedly regular extradition process. We may note, as reasoned in Smith, that while his evidence may have large significance in the eventual determination of his guilt or innocence, such is a matter we may not consider herein.

Appellant's second assignment of error questions the refusal of the trial court to hear evidence on the motivation behind the extradition process, to-wit: that it was being used for the collection of a private debt. Appellant cites several Oklahoma cases holding that the prosecution's motive for extradition is open to inquiry in habeas

corpus proceedings. Ex parte Offutt, 234 P. 222 (Oklahoma 1925); Ex parte Maddox, 25 P. 2d 1111 (Okla. 1933); Ex parte Sesler, 185 P. 2d 705 (Okla. 1947); Ex parte Patrick, 189 P. 2d 420 (Okla. 1948). We note, however, that these cases are representative of a minority rule, 94 A.L.R. 1493, and cases cited therein, and a rule to which we do not adhere.

The general rule is that under federal law the governor of the asylum state has for decision, and his inquiry is limited to, the questions of whether the demanded person has been substantially charged with a crime and whether he is a fugitive from justice. Roberts v. Reilly, 116 U.S. 80 (1885).

It is further generally, although not universally, held that any consideration of or inquiry into the motives which induced and guided the request for extradition is immaterial and inappropriate. In re Moyer,

12 Idaho 250, 85 P. 190 (1906); Pettibone vs. Nichols, 203 U.S. 192 (1906); People ex rel Carr v. Murray, 192 N.E. 198 (Ill. 1934); Drew v. Thaw, 235 U.S. 432 (1914).

It follows that the order of the trial court quashing the writ of habeas corpus and ordering the appellant to surrender himself for extradition is affirmed.

McFADDEN, C. J., McQUADE, DONALDSON and SPEAR, JJ., concur.